

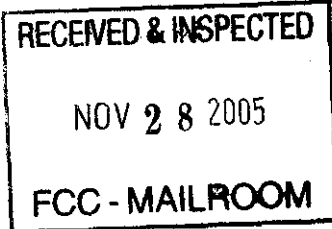


E-RATE EXCHANGE

focused. experienced. dedicated.

November 25, 2005

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FCC, Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: FY 2004 Southern Westchester BOCES eChalk LLC Appeal CC Docket No. 02-6
471 Application Number 411754 & 416280, Billed Entity Number 123677


To Whom It May Concern:

Based upon the Schools & Libraries Division Administrators Decision on Appeal dated September 30, 2005 for Southern Westchester BOCES we believe there is basis for further examination of Southern Westchester BOCES Funding Year 2004 471 Applications 411754 and 416280.

This is an appeal of the Funding Year 2004 Funding Commitment Decision Letters for Southern Westchester BOCES 471 Application Numbers 411754 & 41628 dated April 19, 2005 and the Administrators Decision of Appeal dated September 30, 2005. The E-rate funding was denied on both applications for the same reason: "The estimated charge was changed to reflect the documentation provided by the applicant. The dollars requested were reduced to remove the ineligible eChalk services. A substantial number of LOAs provided did not show your authority to purchase the services in the funding request."

Enclosed in this appeal are the documents that validate Southern Westchester BOCES authority to apply for E-rate discounts for eChalk services on behalf of its member districts. Therefore, Southern Westchester BOCES is requesting an FCC review of the appeal decision based on the arguments herein. The SLD's funding denial decisions should be reversed, and full funding should be granted. Thank you for reviewing this appeal.

Respectfully Submitted,
E-rate Exchange, LLC


Shari Dwyer
President
PO Box 451, Syracuse, NY 13206,
Tel.) 315.422.760, Fax) 866.283.9332
sld@erateexchange.com

CC: Ms. Meghan Clark – eChalk LLC
Mr. Torrence Robinson – eChalk LLC
Mr. Michael Stepkoski – Southern Westchester BOCES
Ms. Mary Lynn Collins – Southern Westchester BOCES

Enclosures:

Exhibit 1 – Funding Commitment Decision Letters for Form 471 applications 411754 and 416280
Exhibit 2 – Letter of Appeal to the SLD from SW BOCES, dated June 16, 2005 Letter of Agency
Exhibit 3 – Administrator's Decision on Appeal – Funding Year 2004-2005
Exhibit 4 – SW BOCES Contract for Cooperative Educational Services State of New York
Exhibit 5 – SW BOCES Letters of Agency

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Syracuse, New York 13206

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IN THE MATTER OF:)
)
SOUTHERN WESTCHESTER) **CC Docket No. 02-6**
BOCES)

RECEIVED & INSPECTED
NOV 28 2005
FCC - MAILROOM

The Southern Westchester BOCES (SW BOCES) respectfully requests the Federal Communications Commission (FCC) review and overturn the funding denial decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC.) The SW BOCES specifically appeals the April 19, 2005 funding denial of 471 applications 411754 and 416280 in the combined amount of \$354,736.57. *See Exhibit 1: Funding Commitment Decision Letters for Form 471 applications 411754 and 416280.* The SW BOCES submitted an initial appeal to the SLD asking for a reversal of the funding denial decision on June 16, 2005.. That appeal was denied via a letter from the “Administrator” dated September 30, 2005, thus the reason for this Request for Review to the FCC.

In both funding commitment decision letters, the reason for denial is the same:

“The estimated charge was changed to reflect the documentation provided by the applicant. The dollars requested were reduced to remove the ineligible eChalk services. A substantial number of LOAs provided did not show your authority to purchase the services in the funding request.”

The SW BOCES appeal to the SLD clearly stated evidence and arguments as to why we believe this decision was made in error and should be overturned. *See Exhibit 2: Letter of Appeal to the SLD from the SW BOCES, dated June 16, 2005.* The SW BOCES is requesting an FCC review of the appeal denial based on the following arguments:

1. The Administrator's Decision on Appeal letter, dated September 30, 2005, did not justify the reason for the appeal denial, in fact, the letter inaccurately

describes the reason for the original funding denial, and then bases the appeal denial on that inaccurate statement. (*See Exhibit 3: Administrator's Decision on Appeal - Funding Year 2004-2005*). It states:

“The SLD denied your application because you failed to provide proof of your authorization to represent all entities for which services were sought and/or proof of their membership in the consortium. In your appeal, you did not show that the SLD’s determination was incorrect. Consequently, your appeal is denied”

This statement is clearly incorrect. The SW BOCES application was NOT denied because of the failure to provide LOAs for all entities in the consortium, according to the SLD’s own letter, it was denied because a “substantial number of LOAs provided did not show your authority to purchase the services in the funding request.” (*See Exhibit 1*) The SW BOCES original letter of appeal to the SLD addresses this issue solely, as this was the stated reason why the applications were denied.

The SW BOCES and eChalk have spent time and resources to clearly state the reasons why we disagree with the funding denial, and to go through this lengthy appeal process. To have the appeal denied based on clearly erroneous information is not only a waste of our valuable resources, but is extremely discouraging for two very active and long time participants in the Erate program.

2. The guidance on the SLD’s web site specifically states that LOAs are not the only vehicle that a consortium can use to establish the authority to purchase services on behalf of a consortium member. The language on the SLD’s website specifically reads:

“The authorized person on the Form 471 — the person whose signature appears in the Form 471 Item 34 — certifies that he or she is the person authorized to submit and certify to the accuracy of the application. This

person must be authorized to represent any and all of the entities for which discounts are sought in the funding requests featured on the application. During its review of the Form 471, the SLD may require copies of the documentation that confirms this person's authorization to represent all of the entities featured on the Form 471.

The evidence that establishes this authorization — and therefore, that establishes the relationship between the authorized person and the entities featured on the form — is generally a Letter of Agency (LOA). A Letter of Agency (LOA) is most commonly signed by consortium members and kept on file by their consortium leader to verify their knowledge of their membership and participation in the consortium. **Other vehicles to establish this authorization could be a project agreement, a contract, a letter agreement, or other similar document.** "

The SW BOCES clearly has that authority vested in them via one of the above referenced "other vehicles." Namely, a contract with the State of NY. (*See Exhibit 4: SW BOCES Contract For Cooperative Educational Services State of NY*) Therefore, the LOAs should not have been required in the first place. The SW BOCES went ahead and obtained LOAs from each of its member districts as a safeguard. For details of the roles and responsibilities of the SW BOCES as it pertains to purchasing services on behalf of its members, please refer to *Exhibit 2*.

3. The SW BOCES obtained fully executed Letters of Agency from each consortium member prior to filing its form 471. (*See Exhibit 5: SW BOCES Letters of Agency*) The Letters of Agency provide clear and concise evidence of consortium membership and the authority conferred by consortium members to the SW BOCES to file appropriate FCC forms seeking Erate discounts. There is no dispute about whether or not the SW BOCES obtained an LOA from each district on whose behalf it filed the Form 471 application. The SW BOCES produced each and every letter for the entities included in the consortium Form 471 applications.

We believe that the SW BOCES had complete authority to file for discounts on eligible eChalk services for the school district members it listed in its Erate application. This authority to file applications is possessed independently by virtue of the contracting authority vested in it by the state of NY. (*See Exhibit 2: Letter of Appeal to the SLD from the Erate Exchange, on behalf of the SW BOCES, dated June 16, 2005.*) We respectfully request that the FCC review our original arguments outlined in our original appeal.

Furthermore, the issue at hand is not whether the SW BOCES had obtained fully executed Letters of Agency from its consortium members, but rather did those letters provided sufficient authorization to the SW BOCES to file the Erate applications for eChalk services. FCC regulations detail the requirements for the Universal service Support for Schools and Libraries beginning in 47 C.F. R 54.500. Beyond granting consortia the ability to apply for Erate funds, the codified regulations require no specific elements to be included in a Letter of Agency. In the *Project Interconnect* opinion, the FCC mandates no specific information components that must be required in a Letter of Agency other than insuring that a consortium member has authorized the consortium leader to apply for Erate discounts on behalf of the members.

The SW BOCES' Letter of Agency confirms that each consortium member has authorized the SW BOCES to apply for Erate discounts on behalf of the member organization. The LOA's specifically authorize the SW BOCES to submit FCC forms 470 and FCC forms 471 and "other Erate forms" to the SLD on behalf of that consortium member. Furthermore, the SW BOCES was acting in good faith with its consortium members to purchase valuable services at a discount through the Erate program.

It appears as though the SLD's guidance on what language needs to be included in an LOA is much more specific than the FCC codified regulations. The SLD's guidance requires specific information components be included in an LOA in order for the SLD to consider that LOA as valid. Therefore the SLD is going

beyond its charter of administering FCC rules and is engaging in its own policymaking that goes beyond what is clearly stated in the FCC orders and regulations. USAC and the SLD were specifically created to administer the rules and regulations generated by the FCC, not to develop its own rules and regulations. This has been an ongoing problem with the Erate program and contributes to the lack of clarity of the many rules and regulations. In this particular case, the SLD has gone far beyond the requirements created by the FCC, and has prescribed much more stringent rules.

Conclusion:

Not only are the SW BOCES letters of agency completely sufficient to show that its consortium members are authorizing the SW BOCES to file Erate forms on behalf of members based on FCC codified regulations, but, as clearly stated in the SW BOCES' original appeal, that authority already exists via NY State law, independent of any LOAs.

The SW BOCES has obtained and provided here the appropriate documents to provide evidence of its authority to apply for Erate discounts for eChalk services on behalf of its member districts. The SLD's funding denial decisions should be reversed, and full funding should be granted.

Respectfully Submitted,

Shari Dwyer
President
Erate Exchange, LLC
PO Box 451
Syracuse, NY 13206
Tel: 315-422-7608
Fax: 866-283-9332
E: sld@erateexchange.com

Form 471 Application Number, and the Billed Entity Number from the top of your letter.

3. When explaining your appeal, copy the language or text from the Funding Commitment Report that is at the heart of your appeal, to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We encourage the use of either the e-mail or fax filing options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, sent to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Universal Service Support Mechanism. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. The SLD may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by the SLD, the applicant, or the service provider. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

A GUIDE TO THE FUNDING COMMITMENT REPORT

A report for each E-rate funding request from your application is attached to this letter. We are providing the following definitions for the items in that report.

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FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual funding requests submitted on a Form 471.

FUNDING STATUS: Each FRN will have one of the following definitions:

1. An FRN that is "Funded" is approved at the level that the SLD determined is appropriate for this FRN. The funding level will generally be the level requested unless the SLD determines during the application review process that some adjustment is appropriate.
2. An FRN that is "Not Funded" is one for which no funds were committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules, or because the total amount of funding available for this Funding Year was insufficient to fund all requests.
3. An FRN that is "As Yet Unfunded" reflects a temporary status that is assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for requests for Internal Connections at a particular discount level. For example, if your application included requests for discounts on both Telecommunications Services and Internal Connections, you might receive a letter with funding commitments for your Telecommunications Services funding requests and a message that your Internal Connection requests are "As Yet Unfunded." You would receive one or more subsequent letters regarding the funding decision on your Internal Connections requests.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on your Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on your Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

SERVICE START DATE: The date services were reported to start for this FRN on your Form 471.

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on your Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a. This will be present only for "site specific" FRNs.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE RECURRING CHARGES: Eligible monthly pre-discount amount approved for recurring charges multiplied by number of months of recurring service approved for the funding year.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE NON-RECURRING CHARGES: Annual eligible non-recurring charges approved for the funding year.

PRE-DISCOUNT AMOUNT: Amount in Form 471, Block 5, Item 23I, as determined through the application review process.

DISCOUNT PERCENTAGE APPROVED BY THE SLD: The discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse your service provider for the approved discounts for this service for this funding year. It is important that you and your service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually rendered.

FUNDING COMMITMENT DECISION EXPLANATION: This entry provides an explanation of the amount in the "Funding Commitment Decision."



Universal Service Administrative Company
Schools & Libraries Division

Exhibit 1

FUNDING COMMITMENT DECISION LETTER

(Funding Year 2004: 07/01/2004 - 06/30/2005)

April 19, 2005

Shari Dwyer
SOUTHERN WESTCHESTER BOCES
PO Box 451
Syracuse, NY 13206

Re: Form 471 Application Number: 411754
Funding Year 2004: 07/01/2004 - 06/30/2005
Billed Entity Number: 123677
Applicant's Form Identifier: 04SWEchalk

Thank you for your Funding Year 2004 E-rate application and for any assistance you provided throughout our review. Here is the current status of the funding request(s) featured in the Funding Commitment Report at the end of this letter.

- The amount, \$298,634.74 is "Denied."

Please refer to the Funding Commitment Report on the page following this letter for specific funding request decisions and explanations.

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you throughout the application process.

NEXT STEPS

- Review technology planning approval requirements
- Review CIPA Requirements
- File Form 486
- Invoice the SLD using the Form 474 (service providers) or Form 472 (Billed Entity)

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the Funding Request Number(s) (FRNs) from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) after you file your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that provides a definition for each line of the Report.

TO APPEAL THIS DECISION:

If you wish to appeal the decision indicated in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Funding Commitment Decision(s) you are appealing. Indicate the relevant funding year and the date of the FCDL. Your letter of appeal must also include the Billed Entity Name, the

FUNDING COMMITMENT REPORT

Form 471 Application Number: 411754
Funding Request Number: 1129562 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143020189 Service Provider Name: eChalk, L.L.C.
Contract Number:
Billing Account Number: N/A
Service Start Date: 07/01/2004
Contract Expiration Date: 06/30/2005
Annual Pre-discount Amount for Eligible Recurring Charges: \$590,531.40
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$103,968.00
Pre-discount Amount: \$694,499.40
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Unauth. Consortium Members
Funding Commitment Decision Explanation: The estimated charge was changed to reflect the documentation provided by the applicant. The dollars requested were reduced to remove the ineligible eChalk services. A substantial number of LOA's provided do not show your authority to purchase the services in this FR.



FUNDING COMMITMENT DECISION LETTER

(Funding Year 2004: 07/01/2004 - 06/30/2005)

April 19, 2005

Shari Dwyer
SOUTHERN WESTCHESTER BOCES
PO Box 451
Syracuse, NY 13206

Re: Form 471 Application Number: 416280
Funding Year 2004: 07/01/2004 - 06/30/2005
Billed Entity Number: 123677
Applicant's Form Identifier: 04SWNyackEchalk

Thank you for your Funding Year 2004 E-rate application and for any assistance you provided throughout our review. Here is the current status of the funding request(s) featured in the Funding Commitment Report at the end of this letter.

- The amount, \$17,171.25 is "Denied."

Please refer to the Funding Commitment Report on the page following this letter for specific funding request decisions and explanations.

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you throughout the application process.

NEXT STEPS

- Review technology planning approval requirements
- Review CIPA Requirements
- File Form 486
- Invoice the SLD using the Form 474 (service providers) or Form 472 (Billed Entity)

FUNDING COMMITMENT REPORT

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Form 471 Application Number, and the Billed Entity Number from the top of your letter.

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Schools and Libraries Division
Universal Service Administrative Company

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PRE-DISCOUNT AMOUNT: Amount in Form 471, Block 5, Item 23I, as determined through the application review process.

DISCOUNT PERCENTAGE APPROVED BY THE SLD: The discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse your service provider for the approved discounts for this service for this funding year. It is important that you and your service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually rendered.

FUNDING COMMITMENT DECISION EXPLANATION: This entry provides an explanation of the amount in the "Funding Commitment Decision."

FUNDING COMMITMENT REPORT

Form 471 Application Number: 416280
Funding Request Number: 1144427 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143020189 Service Provider Name: eChalk, L.L.C.
Contract Number:
Billing Account Number: N/A
Service Start Date: 07/01/2004
Contract Expiration Date: 06/30/2005
Annual Pre-discount Amount for Eligible Recurring Charges: \$25,080.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$9,262.50
Pre-discount Amount: \$34,342.50
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Unauth. Consortium Members
Funding Commitment Decision Explanation: The dollars requested were reduced to remove the ineligible eChalk services. A substantial number of the Letters of Agency provided by the consortium leader do not show your authority to purchase the services in this FRN on behalf of the entity (ies) listed in Block 4.



June 16, 2005

Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

To Whom It May Concern:

On behalf of the following entities:

Blind Brook School District
Dobbs Ferry School District
Edgemont School District
Garrison School District
Haverstraw Stony Point (North Rockland
School District)
Katonah School District
Mount Pleasant School District

Mount Pleasant Cottage School
District
New Rochelle School District
Nyack School District
Peekskill School District
Port Chester School District
Southern Westchester BOCES
eChalk LLC

I am submitting this letter of appeal regarding denial of E-rate FY 2004 funding request for eChalk services on the grounds that the LOA did not show the SW BOCES' authority for purchasing eChalk services on behalf of the above named districts. The details of the FCDL denial are below:

Applicant Name:	Southern Westchester BOCES
471 Application Numbers:	411754, 416280
Billed Entity Number :	123677
FRN:	1129562, 1144427

SLD Explanation for denial:

"The estimated charge was changed to reflect the documentation provided by the applicant. The dollars requested were reduced to remove the ineligible eChalk services. A substantial number of LOA's provided do not show your authority to purchase the services in the funding Request."

I. Issue

The issue in this case boils down simply to this:

Whether Southern Westchester BOCES ("SW BOCES") had authority to file for discounts on (eligible) eChalk services for the school district members it listed as consortium members in its E-rate application.

We contend that it did.

II. Summary of Argument

- SW BOCES did not need Letters of Agency (“LOAs”) to establish its authority to file the applications at issue here.
- SW BOCES possessed this authority *independently* by virtue of the contracting authority vested in it many years before by the State of New York.
- SW BOCES only requested LOAs from member districts to be safe; that is, it feared that the SLD might condition E-rate discounts on the possession of these specific pieces of paper – in other words, even though it did not really need LOAs, it feared that the SLD might nevertheless require them.
- Every member district cooperated with SW BOCES by completing a LOA. Note that this was *not* something the SWB member districts would ordinarily do, as SW BOCES did not need LOAs to contract on their behalf. Unfortunately, it appears that some districts inadvertently failed to include in their LOAs the full panoply of words necessary to describe the services for which that they had, *in fact*, intended SW BOCES to apply for discounts on their behalf.
- The SLD’s decision should be reversed because SW BOCES had full and complete authority under state law, *without LOAs*, to contract and thus to apply for discounts on eChalk services.
- The SLD’s decision should also be reversed because each member school district fully intended its LOA to cover eChalk services to include email services and web hosting.

III. Argument

The SLD concluded that SWB did not possess the necessary authority to file for discounts on eChalk service in the Internet Access category, presumably because several member districts failed to include the term “Internet Access” in their LOAs. The SLD’s conclusion is incorrect for two reasons.

First, SW BOCES did not need a letter of agency from each district to establish its authority to file this application because it possessed this authority independently. In 1948, to save money and for other reasons, the New York State Commissioner of Education and the Board of Regents established SW BOCES to provide shared services to schools and school districts in its geographic region. In so doing, the State of New York vested SW BOCES with authority to negotiate and contract for shared services on behalf of every school district in its statutorily defined region.

Internet Access, including e-mail (eChalk) services, are among the shared services that SW BOCES has authority to provide to its members. To provide these and other

technology services. SW BOCES uses a subsidiary organization, the Lov Regional Information Center (LHRIC). The mission of the LHRIC is to provide regional leadership and to collaborate with school districts and communities to meet their educational challenges by delivering cost-effective, high quality technology services. The LHRIC has an annual budget of more than \$25 million dollars and employs more than 170 Information Technology professionals. It provides a comprehensive menu of cost effective and high quality services including: Technical services and support; Internet access; regional Internet filtering; test scoring; data warehousing; financial and student information systems; staff development; planning; project management; and systems integration. <http://www.lhric.org/about/index.html> With a budget and a staff of this magnitude and responsibility for such a wide array of educational technology services, it is evident that the State of New York intended to vest LHRIC's parent organization, SW BOCES, with authority to contract for and apply for discounts on services as technologically fundamental as Internet Access/eChalk services.

Second, even though it was clearly unnecessary, to "E-rate-proof" itself, SW BOCES nevertheless had each district sign an LOA authorizing the BOCES to purchase services and apply for E-rate discounts on their behalf. (See attached LOA) The SLD argues that the problem lies in the fact that the LOA doesn't specifically reference "Internet Access services" as one of the categories of service that the districts authorize the BOCES to purchase. The eChalk service falls within the Internet Access Service category. However, the SW BOCES and the districts fully intended on purchasing services within the Internet Access category, and it was merely a clerical error and oversight that the Internet Access category was not included in the LOA. The SW BOCES didn't recognize the error until the FCDL denial was received. SW BOCES contends that it did have an agreement in place with its members that covered eChalk services, and that this was understood fully by both the SW BOCES and the districts. Moreover, the fact that the component school districts all worked cooperatively together during the procurement of eChalk services proves conclusively that the scope of SW BOCES' agency authority included eChalk services.

Finally, it is important to emphasize again that the districts' agreement with the SW BOCES to procure Internet Access services is consistent with their relationship to the SW BOCES and the role the SW BOCES plays in procurement of services for it's component districts. This is not a situation where a consultant or new consortium leader decided to act on behalf of a district without its knowledge or consent. Rather, it is part of the mission and charter of the BOCES to act on behalf of the districts in procuring services for the districts. The BOCES has played this role since it's founding in 1948. In addition, the BOCES and each district had multiple conversations, discussions, meetings, email communication and other interaction prior to the filing of the Erate 2004 471 for eChalk services and each district was well informed and supportive of the information included on the form 471 application. To verify this statement, you will find evidence of such cooperation and agreement in several forms in the enclosed binder.

The enclosed binder includes a section for each of the districts involved in this appeal, and the evidence of communication, interaction, discussions and agreement between the SW BOCES and the district to allow the SW BOCES to act on the district's behalf in the filing of Erate application for eChalk services. Such evidence is in the form of email communication, calendared meetings and notes. (See attached additional correspondence)



In addition, there is a letter re-confirming the initial agreement that the :
act on behalf of the school districts when filing Erate 2004 applications for eChalk
services and other Internet Access services. (See attached Commitment Letter) Each of
these letters verifies that the districts had full knowledge of and supported the BOCES
filing an Erate application with eChalk services on their behalf.

We are confident that the documentation supplied here will provide ample evidence that
the referenced districts and the SW BOCES had a prior agreement that the SW BOCES
would file Erate applications to procure eChalk services on behalf of the districts. We
respectfully request that you overturn the denial and restore full funding of these FRNs.

Thank you for reviewing this appeal. Please use the contact information below.

Shari Dwyer
President
E-rate Exchange, LLC
PO Box 451
Syracuse, NY 13206
Tel.) 315.422.7608
Fax) 866.283.933
sld@erateexchange.com

Sincerely,

Ms. Shari L. Dwyer,
E-rate Exchange, LLC

Shari L. Dwyer
President
CC: Mr. James O'Brien – Southern Westchester BOCES
Mr. Michael Stepkoski – Southern Westchester BOCES
Ms. Marylynn Collins – Southern Westchester BOCES
Meghan Clark – eChalk LLC

Enclosures: Original LOA's, Additional Correspondence, and Commitment Letters

**Southern Westchester BOCES E-Rate Letter of A
For the Year 2004 - 2005**

Page 2

This is to confirm our school district's participation in the Southern Westchester BOCES E-rate Consortium for the procurement of Internal Connections, Telecommunications Intellipath and Maintenance services. I hereby authorize Southern Westchester BOCES to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Library Division on behalf of the undersigned school district.

I understand that in submitting these forms on our behalf, you are making certifications for our school district. By signing this letter of agency, I make the following certifications:

- (a) I certify that the schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.
- (b) I certify that the schools in our district have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.
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- (i) I certify that I am authorized to sign this letter of agency and, to the best of my knowledge, information, and belief, all information provided to [name of Consortium] for E-rate submission is true.

I understand that persons willfully make false statements on E-rate forms or through this letter of agency can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

District: Blind Brook

Date: 12/15/03 200

Signature: Christine L. Coleman

Name: Christine Coleman

Title: Director of Technology

**Southern Westchester BOCES E-Rate Letter of Agency
For the Year 2004 - 2005**

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District:

Dobbs Ferry

Signature:

[Signature]

Date:

Oct 29 2004

Name:

Richard J. Doherty

Title:

Assistant Superintendent

**Southern Westchester BOCES E-Rate Letter of Agency
For the Year 2004 - 2005**

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District: EDGEMONT UFS

Signature: Robert J. Conboy

Date: 12/17 2003

Name: ROBERT J. CONBOY

Title: ASST. Supt for Business

**Southern Westchester BOCES E-Rate Letter of Agency
For the Year 2004 - 2005**

Exhibit 2

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District: Garrison UFSD

Signature: Diane L. Chaissan

Date: 12/12 2003

Name: Diane L. Chaissan

Title: Business Adm. / District Treas

Southern Westchester BOCES E-Rate Letter of Agency
For the Year 2004 - 2005

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District: Haverstraw
Stony Point
Date: 12/16/03 2003

Signature: Brian D. Menahan
Name: Brian D. Menahan
Title: Asst. Supt.